

DEPARTMENT OF DEFENSE

GENERAL SERVICES
ADMINISTRATIONNATIONAL AERONAUTICS AND
SPACE ADMINISTRATION

48 CFR Part 16

[FAC 97-12; FAR Case 98-007; Item IV]

RIN 9000-AI08

Federal Acquisition Regulation;
Competition Under Multiple Award
Task and Delivery Order Contracts

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (the Councils) have agreed on a final rule. The final rule amends the Federal Acquisition Regulation (FAR) to clarify the procedures governing placement of orders under multiple award indefinite-delivery contracts.

EFFECTIVE DATE: August 16, 1999.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC, 20405, (202) 501-4755, for information pertaining to status or publication schedules. For clarification of content, contact Mr. Ralph DeStefano, Procurement Analyst, at (202) 501-1758. Please cite FAC 97-12, FAR case 98-007.

SUPPLEMENTARY INFORMATION:

A. Background

This final rule amends the procedures for placing orders under multiple award contracts at FAR 16.505(b). The rule emphasizes that agencies must use only fair methods when placing orders. For example, the contracting officer must not employ allocation or designation of any preferred awardee(s) that would result in less than fair consideration being given to all awardees prior to placing each order.

The Councils published a proposed rule in the **Federal Register** at 63 FR 48416, September 9, 1998.

This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993, and is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The Department of Defense, the General Services Administration, and the National Aeronautics and Space

Administration certify that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* The rule merely amends the FAR to clarify the existing prohibition against allocation of orders placed under multiple award contracts.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 16

Government procurement.

Dated: June 9, 1999.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Therefore, DoD, GSA, and NASA amend 48 CFR part 16 as set forth below:

PART 16—TYPES OF CONTRACTS

1. The authority citation for 48 CFR part 16 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

2. Amend section 16.505 by revising paragraph (b)(1); by redesignating paragraphs (b)(2), (b)(3), and (b)(4) as (b)(4), (b)(5), and (b)(6), respectively and adding new paragraphs (b)(2) and (b)(3); and by revising newly designated paragraphs (b)(4)(i) and (b)(4)(ii) to read as follows:

16.505 Ordering.

* * * * *

(b) *Orders under multiple award contracts.* (1) Except as provided in paragraph (b)(4) of this section, for orders issued under multiple delivery order contracts or multiple task order contracts, each awardee must be provided a fair opportunity to be considered for each order in excess of \$2,500. In determining the procedures for providing awardees a fair opportunity to be considered for each order, contracting officers must exercise broad discretion. The contracting officer, in making decisions on the award of any individual task order, should consider factors such as—

- (i) Past performance on earlier tasks under the multiple award contract;
- (ii) Quality of deliverables;
- (iii) Cost control;
- (iv) Price;
- (v) Cost; or

(vi) Other factors that the contracting officer believes are relevant.

(2) In evaluating past performance on individual orders, the procedural requirements in subpart 42.15 are not mandatory.

(3) The contracting officer must set forth in the solicitation and contract the procedures and selection criteria that will be used to provide multiple awardees a fair opportunity to be considered for each order. The procedures for selecting awardees for the placement of particular orders need not comply with the competition requirements of part 6. However, methods, such as allocation or designation in any way of any preferred awardee(s), that would result in less than fair consideration being given to all awardees prior to placing each order, are prohibited. Formal evaluation plans or scoring of quotes or offers is not required. Agencies may use oral proposals and streamlined procedures when selecting an order awardee. In addition, the contracting officer need not contact each of the multiple awardees under the contract before selecting an order awardee if the contracting officer has information available to ensure that each awardee is provided a fair opportunity to be considered for each order.

(4) * * *

(i) The agency need for the supplies or services is so urgent that providing the opportunity would result in unacceptable delays;

(ii) Only one contractor is capable of providing the supplies or services at the level of quality required because the supplies or services are unique or highly specialized;

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DEPARTMENT OF DEFENSE

GENERAL SERVICES
ADMINISTRATIONNATIONAL AERONAUTICS AND
SPACE ADMINISTRATION

48 CFR Part 36

[FAC 97-12; FAR Case 98-023; Item V]

RIN 9000-AI34

Federal Acquisition Regulation;
Application of the Brooks Act

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).